IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7138 of 2007()

[CRIME NO.572/2007 OF VARKALA POLICE STATION]

: PETITIONER

NISHAD KHAN.J., AGED 32 YEARS,
S/O.JALALUDEEN, SUHURA MANZIL,
VENKULAM, EDAVA.

BY ADV. SRI.JAISON JOSEPH

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
VARKALA POLICE STATION,
VARKALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7138 of 2007

Dated this the 28th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 52A of the Copy right Act. The crux of the allegations is that in violation of the provisions of 52A of the Copy right Act, he kept in his shop, for issue to the public, pirated compact discs of certain films.

2. The shop was raided/searched by the police officials on 3/11/2007. Pirated versions of compact discs of some Tamil films were found available in the premises. The petitioner was not available in the shop. A friend of his, who was asked to hold the fort until he returns, was available in the premises.

3. The crime has been registered showing the petitioner - Nishad Khan as the accused. He is allegedly the person who runs the said shop. Investigation is in progress. The petitioner apprehends imminent arrest.

4. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The learned counsel for the petitioner first of all contends that he is not the licensee in respect of the premises. A friend of his, another Nishad Khan is really the licensee of the shop. The petitioner runs another

business in another premises in the locality. Mistaking him to be Nishad Khan, the licensee, the investigating officers are proceeding against the petitioner. Secondly and alternatively it is pointed out that at any rate it cannot be held that contumacious and objectionable publication under Section 52A has taken place.

5. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course. The learned Public Prosecutor concedes that the petitioner is not Nishad Khan, the licensee of the premises. The said Nishad Khan, the licensee has gone abroad leaving the shop in the charge of the petitioner, another Nishad Khan, who conducts business in the shop now. Merely because the absentee/licensee and the petitioner who is the defacto proprietor have the same name, his liability is not in any way lessoned or reduced, submits the learned Public Prosecutor. The learned Public Prosecutor further submits that the petitioner must be held to have published the compact disks within the meaning of Section 3 of the Copy right Act.

6. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. The case diary has been placed before me. I shall not embark on a detailed discussion about the acceptability of the rival contentions and the credibility of the data collected. Suffice it to say that I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

7. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007